

116579

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-203818.2

DATE: October 8, 1981

MATTER OF: Federal Employees Metal Trades Council

**DIGEST:**

Determination under Office of Management and Budget Circular No. A-76 to contract for services rather than have them performed in-house is matter of Executive Branch policy not reviewable as bid protest filed by union representing Federal employees.

The Federal Employees Metal Trade Council filed a protest with this Office on September 8, 1981, in which it objected to the decision of the Department of the Army to contract out for refuse collection and disposal services at Ft. Benning, Georgia.

The documents submitted with the protest reveal that the decision was made in accordance with Office of Management and Budget (OMB) Circular No. A-76. Our Office has repeatedly declined to render decisions concerning the propriety of an agency's determination under A-76 to contract out instead of performing work in-house. These determinations are regarded as beyond the scope of our bid protest decision function because the provisions are matters of Executive Branch policy which do not create legal rights or responsibilities. See Local F76, International Association of Firefighters, B-194084, March 28, 1979, 79-1 CPD 209.

In Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38, we indicated that we would consider it detrimental to the competitive system for the Government to decide to award or not award a contract based on a cost comparison analysis that did not conform to the terms of the solicitation under which bids were submitted. For that reason, we do entertain protests which allege a faulty or misleading cost comparison of the in-house estimate with the bids received. See

*[ Request for Determination Concerning  
Sept 1985 Contract ]*

~~018854~~ [116579]

Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD 317. In those cases, however, our review is intended to protect parties that competed from the arbitrary rejection of their bids, and does not extend to nonbidders such as the Federal Employees Metal Trade Council. Local 1617, American Federation of Government Employees, B-196009, March 4, 1980, 80-1 CPD 171; Locals 1857 and 987, American Federation of Government Employees, B-195733, B-196117, February 4, 1980, 80-1 CPD 89.

Accordingly, the protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel